

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PENSKE TRUCK LEASING, CO., L.P.,)
a Delaware Limited Partnership,)
)
Plaintiff,)
)
v.)
)
RION, LLC, a Nebraska Limited Liability)
Company,)
)
Defendant.)
_____)

8:07CV294

MEMORANDUM AND ORDER

This matter is before the court on defendant's motion to exclude Penske's new liquidated damages calculation. Filing No. [57](#). Defendant has also filed an objection to supplemental trial exhibits filed by the plaintiff. Filing No. [64](#).

With regard to the motion to exclude damages calculations, Filing No. [57](#), the court notes the defendant previously raised this issue in a motion in limine, Filing No. [42](#). The court, after a long discussion regarding the damages issue, determined the motion should be denied **subject to reassertion at trial**. Filing No. [52](#) at 5. Defendant now asserts the same argument, adding that plaintiff has included the new calculations in its trial brief. The court notes again that this is a nonjury trial. As stated previously, the parties are free to raise and argue this issue at trial. Further, the objection to the supplemental trial exhibits likewise relates to the same calculation of damages issue. Defendant argues this is a new calculation, and plaintiff argues it is the same calculation with the corrected amount. The court has already made its determination as to how it will proceed on this issue. Accordingly, the court will deny both the motion and the objection at this time.

THEREFORE, IT IS ORDERED that defendant's motion to exclude, Filing No. [57](#), and objection to supplemental trial exhibits, Filing No. [64](#), are denied and are subject to reassertion at trial.

DATED this 13th day of November, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge